

91st Illinois General Assembly

Senate Transcript

STATE OF ILLINOIS
91ST GENERAL ASSEMBLY
THIRD SPECIAL SESSION
SENATE TRANSCRIPT

1st Legislative Day

December 29, 1999

PRESIDENT PHILIP:

The Senate will please come to order. Will the Members please be at their desks? Will our guests in the galleries please rise? Our prayer today will be given by Senator Geo-Karis. Senator Geo-Karis.

SENATOR GEO-KARIS:

(Prayer by Senator Geo-Karis)

PRESIDENT PHILIP:

Please remain standing for the Pledge of Allegiance. Senator Sieben.

SENATOR SIEBEN:

(Pledge of Allegiance, led by Senator Sieben)

PRESIDENT PHILIP:

...had some requests to videotape: WCIA-Channel 3, WMAQ-TV Chicago, WICS-TV -- WICS-TV. Is leave granted? Leave is granted. Communications from the Secretary of State. Secretary, read the communications.

SECRETARY HARRY:

Enclosed is a copy of Proclamation No. 99-544, filed in my office on December 23rd, 1999, by Governor George H. Ryan, calling

the Illinois Senate of the 91st General Assembly in Third Special Session to commence on December 29, 1999, at 1 o'clock p.m., to consider only Senate Bill 224, as amended by House Amendment No. 2.

The letter dated December 23rd, 1999, and signed by Jesse White, Secretary of State.

(Secretary reads Proclamation No. 99-544)

PRESIDENT PHILIP:

Two organizational resolutions will be adopted. These resolutions will create a Senate Committee of five to wait upon the Governor, and create a Senate Committee of three to approve the Journal. Resolutions, Mr. Secretary.

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SECRETARY HARRY:

Senate Resolution 1, offered by Senator Weaver.

(Secretary reads SR No. 1)

PRESIDENT PHILIP:

Senator Weaver moves to suspend the rules for the purpose of immediate consideration and adoption of Senate Resolution No. 1. Those in favor, signify by saying Aye. Those opposed, Nay. The Ayes have it. The rules are suspended. Senator Weaver has moved

to -- adoption of Senate Resolution No. 1. Those in favor will signify by saying Aye. Those opposed, Nay. The Ayes have it. And the resolution is adopted. Mr. Secretary.

SECRETARY HARRY:

Senate Resolution No. 2, offered by Senator Weaver.

(Secretary reads SR No. 2)

PRESIDENT PHILIP:

Senator Weaver moves to suspend the rules for the purpose of the immediate consideration and adoption of Senate Resolution No. 2. Those in favor, signify by saying Aye. Those opposed, Nay. The Ayes have it. The rules are suspended. Senator Weaver moves the adoption of Senate Resolution No. 2. Those in favor will signify by saying Aye. Those opposed, Nay. The Ayes have it. And the resolution is adopted. Senator Petka, for what purpose do you rise?

SENATOR PETKA:

Thank you, Mr. President. I rise to address an issue that I feel is most critical, with regards to this convening of this Third Special Session. It's not my purpose today to make statements -- to simply interrupt business, but to submit to the record my concern as to what we are doing here today will eventually be challenged in a court of law. The Proclamation that has just been read by the Secretary specifically calls and convenes the Senate into -- only into a Third Special Session for

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the purpose of considering Senate Bill 224, as amended by House Amendment No. 2. I submit that this Proclamation and the call of the Governor as to this Third Special Session is -- is unconstitutional. The framers of the Illinois Constitution of 1970 specifically state that the provision which permits the Governor to call the Senate -- only -- only the Senate into session is to accommodate the confirmation of appointments and for no other reason. Permit me to quote Delegate Friedrich from the Constitutional Convention debates, when he was explaining this new provision with -- with regard to special sessions. Quote: The only business I know that the Senate can transact on its own is the confirmation of appointments which -- which might be desirable if there were a long recess to advise and consent to these appointments. Later, Delegate Sommerschild inquired of Delegate Friedrich as to whether the Governor in the past had wanted to have the Senate advise and consent to the appointment -- to appointments when the Legislature was not in session. Delegate Friedrich responded that due to the salary levels and caliber of the appointees, some may -- not feel comfortable resigning from their current employment to accept the appointment unless their confirmation has taken place. This provision, then, is a contingency to accommodate these situations. Delegate Friedrich further quoted: We just -- we just thought that this was a contingency; we don't think it's going to be abused, and we don't

think it creates any problems for us. Again Delegate Friedrich was called upon to explain the provision, which he responded, and I quote: The other part provides now for the calling of the Senate alone by the Governor. Now the only thing the Senate can do by itself, as you know, is confirm, advise and consent to the appointments of the Governor and hear cases of impeachment. Mr. President, Members of the Senate, I submit that the convening of the Senate alone for the specific purpose designated in the

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Proclamation is at least abusive of the constitutional provision permitting the Governor to call the Senate into -- to -- alone in a special session. I further submit that we are not constitutionally convened and that any action taken during this Third Special Session is, therefore, invalidated and should be invalidated.

PRESIDENT PHILIP:

We've also had some more requests to tape the proceedings: CBS, WLS-TV, WAND-TV, WGN-TV, WLS Chicago-Channel 7, -- WFLD-TV - Fox, Chicago. Leave granted? Leave is granted. Senator Geo-Karis, for what purpose do you rise?

SENATOR GEO-KARIS:

Point of personal privilege.

PRESIDENT PHILIP:

State your point.

SENATOR GEO-KARIS:

Mr. President and Ladies and Gentlemen of the Senate, today my seatmate is celebrating his 35th year in life. He may be here another 35 years, who knows? But anyway, Dave Sullivan has just added a year today and we all want to wish him a happy birthday. And I understand, Senator Clayborne is adding a year today and he's a year older. So I would like all to wish you both a merry, merry, happy birthday and many, many more to come.

PRESIDENT PHILIP:

Thank you, Senator Geo-Karis. Senator Dudycz, for what purpose do you rise?

SENATOR DUDYCZ:

Thank you, Mr. President. On a point of personal privilege.

PRESIDENT PHILIP:

State your point.

SENATOR DUDYCZ:

That gentleman sitting directly in front of you, Senator

Philip, is also celebrating a milestone in his life. One of the most senior individuals in State government is currently resting very comfortably in front of you. But I'd like for the Senate to recognize Jim Harry on his 60th birthday.

PRESIDENT PHILIP:

It's all downhill now. Jimmy, we didn't think you'd last this long, quite frankly. Happy birthday. Senator Hendon, for what purpose do you rise?

SENATOR HENDON:

Point of personal privilege, Mr. President.

PRESIDENT PHILIP:

State your point.

SENATOR HENDON:

Standing -- standing next to me is one of my esteemed colleagues, who I served in the City Council with. He's currently an alderman from the City of Chicago, Alderman Michael Wojcik, and I wanted to welcome him to the Senate.

PRESIDENT PHILIP:

Welcome to the Senate. Senator Demuzio, for what purpose do you rise?

SENATOR DEMUZIO:

Well, I -- I guess on a -- on a point that Senator Petka raised. I'd like to also make some comments if I might, sir?

PRESIDENT PHILIP:

You certainly -- you're entitled to that.

SENATOR DEMUZIO:

Well, I think Senator Petka is -- is -- has every right, obviously, to call into question precisely the procedure that he has, because I had the same comment and raised the same issue over

here about two days ago. I would, however, point out to you, and also in the Constitution, in the legislative Article, in Article IV, Section 5, with respect to session -- sessions, it says, under

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(a), that the General Assembly shall convene each year on the second Wednesday of January and the General Assembly shall be a continuous body during the term for which members of the House are elected. So it would seem to me that during the continuous session of the two-year cycle, with respect to what it says in the Constitution, this may very well be the point that would have some legality, I guess, to it, in -- in the future. I guess also the question might -- might be -- and I talked to the Attorney General's Office informally this morning, that there is nothing in the -- in constitutional law or nothing in the Statute, nothing in the history with respect to the procedure that we've just outlined -- which -- which you have just outlined. I guess the -- the point would be that there would be some way, I guess, at -- in any time, with any procedure, for it to be challenged in court. And certainly you bring up a good question. After twenty-five years, I've seen a lot of things that have taken place around here in the last two or three weeks that I didn't think would ever -- would

ever happen. But I think for the most part, since we are a continuous Legislature and since we are adopting rules with respect to each special session that we are entering, that the procedure could very well be -- be a valid one. Now, I don't quarrel with what you are raising. I just wanted to point out that the -- the continuous language in -- in the legislative Article indicate that -- that is probably where they're hanging their hat and that's why we're here today.

PRESIDENT PHILIP:

Senator Smith, for what purpose do you rise?

SENATOR SMITH:

That -- Ladies and Gentlemen of the Senate, I'd like to announce the -- request that the Democrats would like to have a Caucus in Senator Emil Jones' Office right away, if possible. About fifteen minutes.

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PRESIDENT PHILIP:

Senator Smith, that request is always in order, but I'm going to limit it to fifteen minutes. We'll be back here at quarter to two. Thank you. Senator Karpiel, for what purpose do you rise?

SENATOR KARPIEL:

Thank you, Mr. President. To announce that there is birthday cake out -- right out there, I'm looking at. Something that's always near and dear to my heart. Also to announce a Republican Caucus immediately in Senator Philip's Office.

PRESIDENT PHILIP:

Senator, I will guarantee it'll be -- we'll be out here before you will. The Senate stands at ease until quarter to two.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR MAITLAND)

Senate will come to order. Senator Weaver, for what purpose do you rise, sir?

SENATOR WEAVER:

Thank you, Mr. President. There'll be a Rules Committee meeting in the Anteroom in five minutes.

PRESIDING OFFICER: (SENATOR MAITLAND)

Rules Committee in the President's Anteroom in five minutes. Committee Reports.

SECRETARY HARRY:

Senator Weaver, Chair of the Committee on Rules, reports the following Legislative Measure assigned: Be Approved for Consideration - the Motion to Concur with House Amendment No. 2 to Senate Bill 224.

PRESIDING OFFICER: (SENATOR MAITLAND)

Ladies and Gentlemen, the Calendar has been distributed to

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your desks. ITS {sic} (IIS) television requests permission to videotape today's proceedings. Is leave granted? Leave is granted. And Randy Squires, with -- with AP, requests permission for still photography and the same with the Chicago Tribune, Phil Greer. Is leave granted? Leave is granted. All right. Ladies and Gentlemen, if I could have your -- your attention please. We will be going to Secretary's Desk, Concurrence, with respect to Senate Bill 224. The concurrence motion has been filed and it will be the intent of the Chair to limit debate, because obviously this amendment has received full and thorough debate on December 7th. I'm sorry, December 17th. We will limit the -- the length of time in the debate. There will be two speakers: one proponent, one opponent. And the timer will be set, and the debate -- the time will be three minutes. On the Calendar, on the Order of Concurrence, is Senate Bill 224. Mr. Secretary, read the motion, please.

SECRETARY HARRY:

I move to concur with the House in the adoption of their Amendment No. 2 to Senate Bill 224.

The motion filed by Senator Lawrence Walsh.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Lawrence Walsh.

SENATOR L. WALSH:

Thank you -- thank you, Mr. President and Ladies and Gentlemen of the Senate. Again, I will defer to the cosponsor of this bill, Senator John Cullerton.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Cullerton, to explain the motion, and the timer is set at three minutes. Senator Cullerton.

SENATOR CULLERTON:

Thank you, Mr. President, Members of the Senate. As we know, this bill reenacts the Safe Neighborhood Act, and it also includes

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the controversial provision dealing with whether or not unlawful use of weapon charge should be a felony or a misdemeanor. The problem we've been encountering, I think, is the fact that there's three separate types of people who could be offenders under this Act. There's hunters who are just trying to transport their weapons from their house to the hunting grounds. There's people, who are good people, who want to have a gun to protect themselves who've never had a record. And then there's the bad guys, the bad guys who -- who want to have a gun to commit a crime. So the

problem is we have three different categories of people. And the -- the offense doesn't even distinguish between whether or not it's a loaded gun or an unloaded gun. Now, we've had this as a felony for a number of years. There's been people who would argue very strongly that it's had the effect of cutting down on the bad guys having weapons. That's why people feel very strongly about keeping it a felony. So what are some of our potential solutions? We've looked at some alternatives. We looked at a bill that said the State's attorney gets to pick whether it's a felony or a misdemeanor. The problem with that is, some State's attorneys will say "My whole county, it's got to be a felony." Then we -- and then for those people who are -- think it should be a misdemeanor, you haven't accomplished anything. Also, if that's unconstitutional, it defaults back down, according to the Supreme Court decisions, down to a misdemeanor. So, what is this solution? This solution is a solution that says it's going to be a felony, but for that first two category - the people who are hunters and the people who are good people, who just feel that they need to have a gun for -- for protection - we're going to give them a special type of probation. And this special probation, I -- I can tell you, after talking to some of my colleagues who are defense lawyers, when I explained this to 'em, they said, "That's even better than a misdemeanor." And it is

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better than a misdemeanor for a first offender. If you get this special probation, you are better off than if you got charged with a misdemeanor. If you get charged with a misdemeanor and you're convicted, you've got a conviction. You can't expunge a conviction. If you get this probation, the case -- you're not even found not guilty; you are -- you have your case dismissed. It's as if it didn't happen. And in the bill, it says, "During the period of probation, the person shall not be considered under indictment or otherwise charged with a crime." Now, if you're suspicious about whether or not the first offender is going to get this, we put a presumption in the law that says the judge should give probation. The State's attorney has the right to raise their hand and say, "I think this person shouldn't get the probation", but there's a presumption and they have the burden of proof of showing that there's some reason why they shouldn't get it. If a person has a FOID card and they're a first offender, they're going to get this probation. They will have the first bite at the apple. Now, they can't get a second bite. If they do it again, they're -- they're going to be charged with a felony; they're not eligible for this probation. But I can assure you that when you look at this particular provision that was passed by the House with some ninety-two votes, and you -- and you really sit down and forget all the rhetoric about -- that's been surrounding this legislation, this is a perfect solution for making sure that we charge the bad guys with a felony. And the good people, who are inadvertently, perhaps, violating this law, they will end up

getting a dismissal, rather than any conviction at all.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator...thank you.

SENATOR CULLERTON:

Be happy to answer any questions.

PRESIDING OFFICER: (SENATOR MAITLAND)

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Your time has expired. Senator Petka.

SENATOR PETKA:

Thank you very much, Mr. President and Members of the Senate. As Senator Cullerton has pointed out, we have debated this issue at length, and I think that the -- the rhetoric has toned down. We're a little more civil now. But I do believe that we still are in the never-never land of what is really the essential core and why we're here today. And before I get into the provisions, I just want to reaffirm and restate that, in my opinion, this call that has been made by the Governor violates, clearly, the Constitution of the State of Illinois. The Special Session should not have been called for only one Body, and I'm -- I am confident that, in fact, it does violate the Constitution. But there's something about the process that I think really needs comment, in

a very brief way. Under our Article II, Section 1, we have three diverse branches of government. The Executive Branch in this State is entitled the Executive Branch. We don't have a sovereign. We have an Executive Branch, someone who executes our laws: the laws that are passed by the General Assembly. The General Assembly, a number of years back - two and a half years ago - made a policy determination, and that policy determination was real simple: That first-time offenders in this State would have misdemeanors and second-time offenders would have a Class 3 felony for a violation of the Section in question. Thirty-six Members of this Body and seventy-three Members of the other side of the rotunda voted in that manner. And yet - and yet - we are forced here, during one of the happiest and holiest times of the year, to be down here in Springfield and having something placed upon us that is contrary to the will of the overwhelming majority of people who voted on this precise issue two and a half years ago. It -- it occurs to me that what we're really talking about today, moreso than this isolated provision that Senator Cullerton

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has explained, is really the integrity of the process that we're involved in and the independence of this branch of government. In

my opinion, the -- the laws that -- that -- or, the proposition that is before this Body, ninety-nine percent of it has already been basically agreed to. Ninety-nine percent. In -- in any type of a situation where we are dealing with an -- an issue like this, where ninety-nine percent of the matter has already been resolved, then the other one percent could very easily be resolved in -- in a time and a place different than in the -- the very, very unusual circumstances that we find ourselves in. As far as the -- the -- the pure merit of this bill, a felony is still a felony is still a felony. And the regulatory scheme that we have crafted in the State of Illinois is so complicated. It is -- is so filled with interpretations and, in many instances, misinterpretations, that, yes, it truly can become a trap for a person who will be placed in a position of being a felon. And for the two years...

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Petka, bring your remarks to a close, please.

SENATOR PETKA:

For the year and a half that that person is on probation, he will simply not be able to enjoy hunting and other outdoor sports. Mr. President and Members of the Senate, I know that there's been a lot of debate on this. I would simply ask that those individuals who truly believe that the time has come for us to declare our "Declaration of Independence" as the Legislative Branch, that the proper course is to vote No.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Cullerton, a one-minute close.

SENATOR CULLERTON:

Thank you, Mr. President. I certainly respect Senator Petka's

opinion. He's been a prosecutor. He was responsible for putting many people in jail. He was a very effective law enforcement

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officer. I would point out, however, I also worked in the criminal courts myself. In fact, Senator Petka, over a two-year period, I had the highest conviction rate in Cook County. Unfortunately, I was a public defender; you were a prosecutor. But -- but -- but -- but they still went to jail and that's the important thing. I appreciate the fact that you've been working hard on this matter. We've been working hard, as well. I really think that what we have here is a very legitimate compromise that will definitely work. As I said before, we've got three categories of people here. The hunters - we have bent over backwards - they even get to keep their gun. They get to keep their FOID card while they're on this probation. We put that in at the request of people from the Senate Republican side. So with all of this, I think when you examine it, you'll find that this is fair. It will have the desired effect of keeping bad guys from getting weapons. They will know if they have 'em, they're going to be charged with a felony. I'd ask for an Aye vote.

PRESIDING OFFICER: (SENATOR MAITLAND)

This is final action. The question is, shall the Senate concur in House Amendment No. 2 to Senate Bill 224. Those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, there are 31 Ayes, 17 Nays, 2 Members having voted Present. The motion fails. Senator DeLeo, for what purpose do you arise, sir?

SENATOR DeLEO:

Mr. President, thank you. My switch malfunctioned. There's no -- there's no electronic. It's not working. So I'd like the record to -- and -- and the power was just out in the building. The switch is -- still isn't -- there's -- I can't get a red, I can't get a Present -- I -- I would be voting Yes.

PRESIDING OFFICER: (SENATOR MAITLAND)

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The record, Senator, will reflect what your intent was. That's happened before, and the record stands. Is there any further business to come before the Senate? If not, Senator Geo-Karis moves that the Third Special Session -- Senator -- Senator Berman, for what purpose do you arise, sir?

SENATOR BERMAN:

Thank you, Mr. President. I thought, on December 2nd, everybody was so kind to me and I said good-bye and it was wonderful, but we were back. I did want to say how much I've enjoyed serving with all of you. You are all my friends. I appreciate it. A healthy and a happy New Year to you. Thank you, Mr. President.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Jones, what purpose do you arise, sir?

SENATOR E. JONES:

Yeah. Thank you, Mr. President. We all appreciate the dedicated service of Senator Berman. He flew in from the warm weather in Florida to be here to cast an affirmative vote. I wish all the Members on this side, as well as on the other side of the aisle, a very happy -- very happy New Year. And also I was concerned about the Y2K. I don't know whether Senate President Pate Philip caused the lights to be out, but the lights went out for quite some time. So whether it's a premature Y2K, I don't know, Mr. President.

PRESIDING OFFICER: (SENATOR MAITLAND)

Senator Fawell, for what purpose do you arise, ma'am?

SENATOR FAWELL:

I, too, would like to, I -- I hope - I hope - that was my last vote. And I would like to say how -- how much I have enjoyed being here. I'll miss you, and thanks.

PRESIDING OFFICER: (SENATOR MAITLAND)

All right. Senator Geo-Karis has moved that the Third Special

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Session of the Senate stand adjourned. Senate is adjourned.

